

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, ATTORNEY GENERAL,
in his capacity as Attorney General,

Plaintiff/Petitioner,

v.

CIVIL ACTION NO. 14-C-1944
Bailey

HUMAN MOVEMENT, INC. d/b/a Human
Movement Management, a Delaware
corporation; **JEFF SUFFOLK**, individually
and in his capacity as President of Human
Movement Management; and **ALTA EQUITY**
PARTNERS, a Massachusetts corporation,

Defendants/Respondents.

COMPLAINT AND PETITION FOR INJUNCTIVE RELIEF

This action is brought pursuant to the West Virginia Consumer Credit and Protection Act (W.Va. Code § 46A-1-101 *et seq.*); and West Virginia law which authorizes the Attorney General of West Virginia to file civil suit and obtain injunctive relief. The State of West Virginia, by and through Attorney General Patrick Morrissey (hereinafter "the State"), the Plaintiff/Petitioner in this matter, has reason to believe the above-named Defendants/Respondents, have violated provisions of West Virginia law, and engaged in intentional, tortious, unconscionable, negligent, and/or other unlawful conduct.

As detailed herein, the State alleges that Defendants/Respondents intentionally caused the 2014 Charleston Dirty Girl Mud Run to be canceled in order to facilitate Human Movement Management's buyout of the Dirty Girl Mud Run brand name/assets

from 100 LLC. As a result of this conduct by Defendants/Respondents, more than 2,700 individuals paid for a service and expended monies to participate in the event, and were then told the event was canceled and no refunds would be forthcoming. Ultimately, as alleged herein, Defendants/Respondents were successful in their scheme to purchase the 100 LLC assets, and the registrants of the 2014 Charleston Dirty Girl Mud Run became the unwilling pawns in Defendants/Respondents aggressive asset takeover plan.

The State brings this action to enjoin and restrain the Defendants/Respondents from engaging in unfair or deceptive acts or practices in the sale and advertising of tickets for group events the purpose of which, at least in part, purported to be to raise money for charitable organizations, and then failing to perform such event without refund or redress. The State seeks injunctive relief and other equitable relief including, but not limited to, reimbursement for consumers who were harmed by the Defendants'/Respondents' business practices, court costs, investigative costs, attorneys' fees, and civil penalties.

I. PARTIES

1. The Plaintiff/Petitioner State of West Virginia brings this action by and through Patrick Morrissey, Attorney General for the State of West Virginia.
2. The Attorney General is authorized to bring this action pursuant to the West Virginia Consumer Credit and Protection Act, including specifically, W. Va. Code §§ 46A-7-108 through -111, and West Virginia law.
3. Defendant/ Respondent Human Movement, Inc., also known as Human Movement LLC (hereinafter "Human Movement" or "HMM") is a for-profit corporation

organized under the laws of Delaware and whose principal place of business is located at 1111 South Street, Louisville, Colorado 80027.

4. Upon information and belief, Defendant/Respondent Human Movement conducts business in multiple locations throughout the United States, including specifically the State of West Virginia, under the name Human Movement Management.

5. Defendant/Respondent Jeff Suffolk is, upon information and belief, the President of Human Movement and resides in Colorado.

6. Defendant/Respondent Alta Equity Partners ("Alta") is a private equity firm incorporated in Massachusetts and whose principal place of business is 1000 Winter Street, Suite 3500, Waltham, MA 02451.

7. As a private equity firm, Defendant/Respondent Alta makes both minority and controlling equity investments in businesses.

8. Upon information and belief, Defendant/Respondent Alta holds a controlling equity ownership interest in Human Movement and Alta Member/President Tim Dibble serves as a board member of Human Movement.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution, W. Va. Code § 51-2-2, and W.Va. Code § 53-5-3.

10. Venue is proper in this Court pursuant to W. Va. Code §§ 46A-7-114 and 56-1-1.

III.
FACTS COMMON TO ALL COUNTS

11. This action arises out of the scheduled, contracted, advertised, and subsequently canceled 2014 Dirty Girl Mud Run that was to take place on Saturday, July 26, 2014 at the Cato Park in Charleston, West Virginia.

A.
The “Dirty Girl Mud Run”

12. The Dirty Girl Mud Run is a themed 5K race in which participants run through a pre-designed course full of mud stations and obstacles.

13. Started in 2011 by Wisconsin-based 100 LLC, the event is intended only for females and is marketed as a run to celebrate individual achievement over life’s obstacles, including specifically breast cancer.

14. 100 LLC is a for-profit limited liability corporation organized under the laws of Wisconsin and whose headquarters is located at 405 Genesee Street, Delafield, Wisconsin.

15. Since 2011, 100 LLC has conducted business in multiple locations throughout the United States, including specifically the State of West Virginia, under the name Dirty Girl Mud Run.

16. In April 2013, 100 LLC organized, conducted and sold tickets to consumers for a Dirty Girl Mud Run at Coonskin Park in Charleston, Kanawha County, West Virginia. The event happened as scheduled.

17. As the popularity of the Dirty Girl Mud Run grew, so did the demands of producing, marketing, and registering participants for the events. As a result, 100 LLC entered into contractual relationships with a production company (Human Movement

Management) and a third-party ticket servicer (Eventbrite, Inc.) to handle the Dirty Girl Mud Run events across the United States, including the 2014 Charleston event.

B.
Human Movement Management

18. Human Movement Management (“HMM”) is the business name of Defendant/Respondent Human Movement.

19. HMM is an event production company that organizes events across the United States. These events include themed obstacle races, beer festivals, triathlons, and outdoor events.

20. Typically, HMM contracts with a business or owner of a themed-event and agrees to produce the event and handle all the requisite logistics. Several of these events include the Rocky Mountain Triathlon, Oktoberfest, and the 5K Dance Party.

21. While HMM primarily serves as a production company that contracts to produce another entity’s events, HMM also operates its own themed events. Upon information and belief, HMM both owns and produces the Ugly Sweater Run, and more recently, the Zombie Run at various events across the United States.

22. In 2013, 100 LLC contracted with HMM to produce the Dirty Girl Mud Run at over a dozen locations.

23. Upon information and belief, HMM and 100 LLC subsequently executed a long-term agreement for HMM to handle logistics and other production matters relating to the Dirty Girl Race.

24. Upon information and belief, the contract contemplated payment of \$75,000 to HMM for each event produced. While these funds were expected to cover

the production, 100 LLC also agreed to reimburse HMM and/or directly pay certain vendors assisting in the production of the events.

25. Upon information and belief, with the exception of payment to HMM and other vendor invoices, 100 LLC had little involvement or participation in the production and organization of an event. Instead, these logistic and operations were left solely to HMM, and 100 LLC merely contracted away the use of the Dirty Girl Mud Run name brand.

26. In 2014, HMM and 100 LLC again agreed to have HMM produce the Dirty Girl Mud Run across the country, including specifically the event scheduled in Charleston.

C. HMM acquisition of Dirty Girl Mud Run

27. Over the last several years, HMM has sought to expand its business model from merely producing events to include the ownership rights of these same themed-events.

28. In particular, HMM has sought to purchase the assets and brand names of themed events like the Race For Your Lives (now known as the Zombie Run) and the Dirty Girl Mud Run.

29. Upon information and belief, following a successful completion of the 2013 Dirty Girl Mud Run events, HMM began discussions with 100 LLC about the potential sale/purchase of the Dirty Girl Mud Run name and assets.

30. However, upon information and belief, the sale price at that time was too high and no agreement was reached as to the sale. Instead, 100 LLC and HMM

renewed their production agreement whereby HMM would handle the organization and production of the Dirty Girl Mud Run events for the 2014 calendar year.

31. Following the failed purchase discussions, upon information and belief, HMM engaged Tim Dibble and Alta Equity Partners to become investors in HMM.

32. Upon further information and belief, Alta Equity Partners agreed to invest in HMM and were given a controlling interest in HMM and a position on the HMM Board.

33. Upon information and belief, with the investment money/partnership of Alta, HMM re-approached 100 LLC about the asset purchase of Dirty Girl Mud Run.

34. Upon information and belief, an initial agreement was reached with 100 LLC and a closing date of July 1, 2014 was set for the sale/transfer of 100 LLC'S Dirty Girl Mud Run name brand/assets to HMM.

35. Upon information and belief, as the closing neared, a dispute arose with respect to the sale and the monetary amount that HMM/Alta was willing to pay for the Dirty Girl Mud Run assets.

36. Upon information and belief, the dispute between 100 LLC and HMM/Alta resulted in aggressive negotiations about the sale, and the closing date and original agreement was altered.

37. These negotiations continued past the original scheduled July 1, 2014 closing, and upon information and belief, a new closing date was set for July 25, 2014, the day before the scheduled Charleston Dirty Girl Mud Run.

38. However, upon information and belief, the negotiations of the sale continued to breakdown and the terms of the proposed asset purchase continued to change.

39. Further, as the Charleston event and closing date neared, the Charleston event became used as a negotiating tool, even though HMM had contracted separately to perform the production of the event.

**D.
2014 Charleston
Dirty Girl Mud Run**

40. In October 2013, consumers who participated in the April 2013 Dirty Girl Mud Run in Charleston, West Virginia began receiving solicitations from 100 LLC and/or HMM to participate in a future similar event.

41. At the time, 100 LLC represented to consumers that this event would occur on or about June 21, 2014 somewhere in Charleston, West Virginia.

42. 100 LLC additionally offered consumers who registered early for the 2014 event a discount on the \$95.00 registration fee. Early registrants paid fees directly to 100 LLC through the Dirty Girl website.

43. Beginning in January of 2014, 100 LLC contracted with Eventbrite, Inc. to serve as a third-party ticket service for the Dirty Girl Mud Runs across the country, including the scheduled July 26, 2014 event in Charleston.

44. As a third-party ticket service, consumers paid registration fees ranging from \$65.00 to \$95.00 through Eventbrite's website Eventbrite.com. In exchange for the payment of the required registration fee, Eventbrite, Inc. created a "ticket" to the Dirty Girl Mud Run and generated a receipt for the event for participants.

45. Hence, depending on the date of registration, participants paid monies to either Eventbrite or 100 LLC directly for the 2014 Charleston event.

46. In February 2014, consumers who had registered early for the June 2014 Dirty Girl Mud Run were notified that the event had been rescheduled to July 26, 2014 at Cato Park in Charleston, West Virginia.

47. Pursuant to their long-term agreement, the 2014 Charleston event was one of the events that HMM had agreed to produce and organize for 100 LLC.

48. Upon information and belief, on March 10, 2014, HMM entered into a contract with the Charleston West Virginia Convention & Visitors Bureau (hereinafter "CVB") to hold the "Dirty Girl Mud Race" at Cato Park on July 26, 2014.

49. The contract between HMM and the CVB was signed by the President of HMM, Mr. Jeff Suffolk, on April 1, 2014, and makes no reference or assignment to 100 LLC. Rather, per the contract, HMM is the responsible entity producing the event on July 26, 2014, and responsible for the terms within the contract.

50. Pursuant to the contract with the CVB, HMM agreed to numerous terms including specifically, the "Advertising" for the event and "additional race promotional material".

51. The Contract additionally contemplated that the CVB would assist HMM in "recruiting" a transportation service for participants and spectators to Cato Park.

52. Upon information and belief, HMM contracted with Coach USA in Parkersburg, West Virginia to provide transportation for the run participants on July 26, 2014.

53. Upon information and belief, HMM paid Coach USA a deposit check of \$1,400 from 100 LLC to reserve the buses prior to the event. The remainder, approximately \$10,500, was due the week prior to the event.

E.
Intersection of HMM acquisition and
Cancellation of Charleston event

54. Upon information and belief, the 2014 Charleston event was proceeding as contracted and advertised until a week prior to the event. The only exception was the break down in the negotiations for the sale of 100 LLC assets and Dirty Girl Mud Run name brand.

55. Upon information and belief, on or about July 19, 2014, Tim Brady, VP of Sales and Services, at the CVB was contacted by Jeff Suffolk, president of HMM. Upon information and belief, Mr. Suffolk informed Brady that 100 LLC was significantly indebted to HMM and that 100 LLC would not pay HMM to produce the event in Charleston, West Virginia.

56. Upon information and belief, HMM President Suffolk told Brady that HMM would need to alter the contract in multiple ways, including: having the CVB pay for buses necessary for participants, having the port-a-john company donate their services, for the City of Charleston to forgive the remaining \$5,000 fees, and for assistance securing t-shirts.

57. Upon information and belief, Mr. Brady and CVB staff met with city officials regarding the request and subsequently informed Mr. Suffolk at HMM the City could assist HMM in most of its demands, however, it could not absorb the cost of transportation, which was approximately \$12,000.

58. Upon information and belief, on Sunday, July 20, 2014, Mr. Suffolk and the CVB had a telephone conversation regarding the event. Notwithstanding the

concessions of the City, Mr. Suffolk informed the CVB that HMM "would not be coming to Charleston to produce the event."

59. Upon information and belief, on Monday, July 21, 2014 at approximately 9:15 a.m. the Managing Partner of HMM sent the following email to the transportation provider (Coach USA):

Please cancel all buses and drivers - Dirty Girl is canceling the Charleston WV event.

Thank you for being ready to work the event, but they have decided to no longer move forward with the event series.

60. At this time, upon information and belief, 100 LLC became aware of the HMM cancellation and contacted the CVB to ascertain the status of the race and what could be done to facilitate the event and prevent cancellation.

61. Upon information and belief, the CVB relayed the concessions the City was willing to make, and further reinforced that the transportation (Coach USA) would have to be paid in full in order for the event to happen.

62. Upon information and belief, a new agreement was reached between HMM and the CVB wherein the event could take place if HMM paid for the transportation, among other things. As part of this agreement, the transportation provider allowed HMM until close of business on Tuesday, July 22, 2014 to provide the required payment in full.

63. Upon information and belief, in light of the concessions of the CVB and new agreement, 100 LLC and HMM/Alta also began discussions to try and save the Charleston event. Ultimately, upon information and belief, on July 21, 2014, Jeff Suffolk,

President of HMM relayed to a 100 LLC employee that HMM needed \$15,000 to produce the Charleston event.

64. Also upon information and belief, Chris McIntosh, President of 100 LLC agreed to provide HMM with \$15,000 to produce the Charleston event.

65. However, upon information and belief, on July 21, 2014, an Alta employee told 100 LLC via email that it wanted to “make it clear we can’t do anything without a signed deal”, thereby expressly linking the Charleston event to the sale of 100 LLC.

66. Upon information and belief, in an effort to salvage the Charleston event and continue buyout negotiations, 100 LLC wired the amount of \$15,000 to HMM for the purpose of payment to the transportation provider on July 22, 2014.

67. Upon information and belief, Jeff Suffolk, informed Chris McIntyre, President of 100 LLC that he was “tied up” but would “hustle” to get payment to the bus company.

68. Upon information and belief, although 100 LLC had wired the requested \$15,000 to HMM for the Charleston event, HMM did not provide payment to the transportation provider as required by their agreement with the CVB.

69. Accordingly, at approximately 5:30 pm on July 22, 2014, the City of Charleston issued a statement that, “without shuttle bus service and with significant uncertainty over other expenses related to the event, there is no way this event can proceed at Cato Park Saturday morning.”

70. On July 23, 2014, 100 LLC sent an email to all registrants and consumers as follows:

It is with great regret we inform you Dirty Girl Mud Run will not be held this weekend in Charleston, WV. While the city of Charleston

worked diligently and closely with Dirty Girl Mud Run to take all possible steps to put on the event, it cannot be held due to circumstances out of our control. We would like to thank the city of Charleston as well as the city officials for all the assistance they've provided.

We apologize for any frustration caused by the cancellation of the event in Charleston, WV and we are disappointed that we won't be getting muddy with you this Saturday. We understand that this cancellation is abrupt. Per our policy and accepted waiver upon registration, we will not be issuing refunds under any circumstances. At this time, that is all the information we have and we are unable to assist any further in this matter.

71. Upon information and belief, following the cancellation of the Charleston event, HMM informed 100 LLC that it was not going to produce other Dirty Girl Mud Run Events.

72. Instead, upon information and belief, HMM/Alta offered to purchase the Dirty Girl Mud Run assets and name brand at a significantly reduced price, and an agreement to produce several of the other events in other States in which tickets had already been sold.

73. In light of the negative publicity, and facing potential millions of dollars in liabilities should HMM not produce the other scheduled Dirty Girl events, 100 LLC executed an agreement on July 25, 2014 selling the Dirty Girl Mud Run name brand and assets to HMM/Alta.

F. Consumer Complaints

74. Following the announced cancellation and refusal to provide refunds of the paid registration fees, the affected participants began filing consumer complaints with the West Virginia Attorney General's Consumer Protection Division for alleged violations

of the West Virginia Consumer Credit and Protection Act (W.Va. Code § 46A-1-101 *et seq.*).

75. Within 24-hours, over 250 consumer complaints had been filed with the West Virginia Attorney General's office, and continued to be filed in the subsequent days.

76. Having received numerous complaints, the Attorney General's Consumer Protection Division opened an investigation into the Dirty Girl Mud Run and the circumstances surrounding the cancellation and the lack of refunds.

77. On July 25, 2014, Eventbrite, Inc. and the West Virginia Attorney General's Office entered into a Refund Facilitation Agreement in which Eventbrite volunteered and agreed to pay refunds to West Virginia consumers who purchased tickets to the Dirty Girl Mud Run through their website.

78. On July 31, 2014, the Attorney General's Office issued an investigative subpoena upon 100 LLC and has received responsive documents and information relating to the canceled Charleston event.

IV.

CLAIMS FOR RELIEF

79. Based upon information and investigation to date, the State of West Virginia alleges the following causes of actions and claims for relief against the Defendants/Respondents, collectively and individually, and jointly and severally.

80. Further, the State of West Virginia asserts the following causes of actions and claims for relief against the Defendants/Respondents in each Defendant/

Respondent's independent capacity and in their capacity as agents for 100 LLC and/or each other.

A.
Violations of the West Virginia
Consumer Credit and Protection Act

FIRST CAUSE OF ACTION
(General Violation of WVCCPA)

81. The West Virginia Consumer Credit and Protection (WVCCPA) prohibits, *inter alia*, an entity from engaging in unfair methods of competition and unfair or deceptive acts or practices in their relation with a consumer. See W. Va. Code § 46A-6-104.

82. W.Va. Code § 46A-1-102(7) defines unfair methods of competition and unfair or deceptive acts or practices rather broadly, but specifically includes the following prohibited conduct:

(B) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

* * *

(E) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

* * *

(H) Disparaging the goods, services or business of another by false or misleading representation of fact;

* * *

(L) Engaging in any other conduct which similarly creates a likelihood of

confusion or of misunderstanding;

(M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

83. The Defendants/Respondents engaged in unfair methods of competition and unfair or deceptive acts or practices in violation of the WVCCPA, generally, and W. Va. Code § 46A-6-104, specifically.

84. In particular, and without limitation, Defendants/Respondents intentionally created a chaotic situation and propelled cancelation of the Charleston event in order to gain leverage in their faltering attempt to buy the Dirty Girl Mud Run assets and name brand from 100 LLC.

85. To facilitate this intent, Defendants/Respondents used deception, false promises, misrepresentations, and created public confusion and misunderstanding as to the approval, viability, and performance of the Charleston event, including, but not limited to:

- (i) misrepresenting to the City of Charleston CVB that 100 LLC had canceled the event;
- (ii) misrepresenting to the transportation company that the event had been canceled;
- (iii) failing to timely make the payment to the transportation company and/or making a false promise or deception as to the timely payment, thereby causing the City-imposed deadline to lapse;
- (iv) concealing facts and information from the public, the City, and others (including 100 LLC) and/or being deceptive as to the intent to leverage the cancellation of the Charleston event to force the sale of 100 LLC assets; and

- (v) misrepresenting to consumers and/or failing to timely/properly inform consumers of the intent to cancel the event, thereby allowing more consumers to pay registration fees.

86. Further, as a business engaged in the sponsorship and solicitation of consumers to participate in events for recreational and charitable purposes, the Defendants/Respondents may not engage in unfair or deceptive acts or practices in the conduct of such activities.

87. The Defendants/Respondents, by representing to the public that they are qualified and sufficiently capitalized to conduct the event known as Dirty Girl Mud Run, and by soliciting consumers to participate in that event for a fee, when they knew or should have known that they could not meet their obligations to conduct the event, or had no intention of doing so, engaged in unfair or deceptive acts or practices in violation of West Virginia Code § 46A-6-102 and West Virginia Code § 46A-6-104.

SECOND CAUSE OF ACTION
(Engaging in Conduct Resulting in Unjust Enrichment from Consumers)

88. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

89. Per their contract with the West Virginia CVB, Defendants/Respondents were required to maintain an event cancellation policy as part of its agreement with participants in the Charleston Dirty Girl Mud Run.

90. Upon information and belief, Defendants/Respondents utilized the registration agreement drafted by 100 LLC to fulfill this contractual obligation, thereby adopting it as Defendants/Respondents own document and their own terms.

91. Upon information and belief, the registration agreement was required to be signed by all participants, and stated in relevant part:

12. I acknowledge and agree that all entries are final with no refunds. WAIVER OF LIABILITY AND RELEASE 13. I acknowledge and agree that the Event officials reserve the right to cancel or change the Event if in their sole judgment such cancellation or change is necessary or prudent due to emergency, severe weather or local or national disaster, and that if there is a cancellation or change no refund of entry fees will be made.

(¶¶ 12 and 13 of participant agreement)

92. By requiring consumers to sign a "Waiver" document, which purports to relieve the Defendants/Respondents from their obligations to make refunds under any circumstances, even when the event is canceled by the Defendants/Respondents own decision and not circumstances beyond their control, Defendants/Respondents engaged in conduct resulting in their unjust enrichment at the expense of innocent consumers.

93. Further, such waiver and conduct constitutes an unfair or deceptive act or practice in violation of the WVCCPA.

THIRD CAUSE OF ACTION
(Defendant's/Respondent's Waiver is Unconscionable)

94. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

95. By requiring participants to sign a "Waiver" that purportedly relieves Defendants/Respondents of all obligations to make refunds even when the event is canceled by Defendant's/Respondent's own misconduct without any fault of the

consumers, Defendants/Respondents violate the public policy of West Virginia that requires fair dealings with consumers.

96. The Defendants/Respondents, by their actions as alleged herein, have engaged in unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-104, and any such Waiver is both unconscionable and unenforceable.

FOURTH CAUSE OF ACTION
(Requiring Consumers to Waive Their Rights Under the WVCCPA)

97. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

98. Upon information and belief, Defendants/Respondents required every participant in the Charleston Dirty Girl Mud Run to execute and sign a registration agreement that included waiver of rights, including but not limited to consent to the internal laws of the State of Wisconsin without regard to the principles of conflicts of law, that any legal action or proceeding relating to or arising out of the event or the Waiver shall be commenced exclusively in the state's court located in Waukesha County, Wisconsin, and that they have waived their right to trial by jury.

99. By effectively and unlawfully requiring participants to waive their rights under the WVCCPA, Defendants/Respondents have violated West Virginia Code § 46A-1-107.

100. Further, by effectively and unlawfully requiring participants to waive their rights under the WVCCPA, Defendants/Respondents have engaged in unfair or deceptive acts or practices in violation of West Virginia Code § 46A-6-104.

B.
Other Claims

FIFTH CAUSE OF ACTION
(Breach of Contract)

101. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

102. As the entities responsible for producing and organizing the 2014 Dirty Girl Mud Run, Defendants/Respondents were contractually responsible to fulfill the terms of the registration agreement executed by individuals registered to participate in the event.

103. Registrants were required to execute the written registration agreement and pay a monetary fee to participate in the event being produced and conducted by Defendants/Respondents.

104. The execution of the registration agreement and payment of the fee created an expectation that Defendants/Respondents would fulfill their underlying term within the agreement, to wit: conduct the event as planned.

105. However, Defendants/Respondents intentionally engaged in unlawful conduct that directly and proximately caused the Charleston event to be canceled and the registrants to incur unreimbursed damages and expenses as a result of the cancellation.

106. The intentional conduct of Defendants/Respondents included deception, false promises, misrepresentations, unfair or deceptive acts or practices in violation of the WVCCPA and West Virginia law. Such intentional conduct included, but is not limited to:

- (i) misrepresenting to the City of Charleston CVB that 100 LLC had canceled the event;

- (ii) misrepresenting to the transportation company that the event had been canceled; and
- (iii) failing to timely make the payment to the transportation company and/or making a false promise or deception as to the timely payment, thereby causing the City-imposed deadline to lapse.

107. Further, upon information and belief, but for Defendants/Respondents intentional, unlawful conduct, the Dirty Girl Mud Run would have taken place and planned and the registration and terms contained therein would have been fulfilled.

SIXTH CAUSE OF ACTION
(Tortious Interference)

108. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

109. To the extent any or all of the Defendants/Respondents are deemed not to be in privity with the contractual relationship with the participants that registered for the Charleston Dirty Girl Mud Run, Defendants/Respondents unlawful, outrageous, intentional conduct tortiously interfered in the contractual relationship and terms between 100 LLC/Defendants/Respondents and the individuals that registered for the 2014 Charleston Dirty Girl Mud Run.

110. More particularly, approximately 2,700 individuals registered to participate in the Charleston Dirty Girl Mud Run. As part of the registration, each individual was required to execute and sign a written registration agreement and pay a fee.

111. The payment of the fee and execution of a written registration agreement established an expectation that the Dirty Girl Mud Run event would take place as planned in Charleston on July 26, 2014.

112. However, the Defendants/Respondents who were not in privity with the contractual relationship with the Charleston registrants intentionally engaged in unlawful conduct that directly and proximately caused the Charleston event to be canceled and the registrants to incur unreimbursed damages and expenses as a result of the cancellation.

113. The intentional conduct of Defendants/Respondents included deception, false promises, misrepresentations, unfair or deceptive acts or practices in violation of the WVCCPA and West Virginia law. Such intentional conduct included, but is not limited to:

- (i) misrepresenting to the City of Charleston CVB that 100 LLC had canceled the event;
- (ii) misrepresenting to the transportation company that the event had been canceled; and
- (iii) failing to timely make the payment to the transportation company and/or making a false promise or deception as to the timely payment, thereby causing the City-imposed deadline to lapse.

114. Further, upon information and belief, but for Defendants/Respondents intentional, unlawful conduct, the Dirty Girl Mud Run would have taken place as scheduled and the registration and terms contained therein would have been fulfilled.

SEVENTH CAUSE OF ACTION
(Alter Ego)

115. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

116. Upon information and belief, Defendant/Respondent HMM is a closely held corporation consisting of only a few managers, notably Jeff Suffolk and Alta Equity Partners.

117. Upon information and belief, Defendant HMM is operated directly by Defendants/Respondents Suffolk and Alta Equity Partners and they are one in the same with Defendant HMM so as to possess a unity of interest.

118. Upon information and belief, Defendants Suffolk/Alta, and/or their agents, representatives, or employees engaged in intentional, unlawful conduct thereby causing the cancellation of the 2014 Charleston Dirty Girl Mud Run.

119. Given the unity of interest and actions/conduct of its managers, Defendant Suffolk and Defendant Alta are personally liable for all violations of West Virginia law committed by Defendant HMM.

C. Injunctive Relief

120. The State reasserts each and every foregoing allegation/paragraph in this Complaint as if set forth fully herein.

121. Pursuant to the West Virginia Consumer Credit and Protection Act, including notably W.Va. Code § 46A-7-108 through 110, the State seeks to enjoin the Defendants/Respondents from any ongoing current violations as well as prohibit similar unlawful conduct in the future.

122. Upon information and belief, since the cancellation of the Charleston event, Defendants/Respondents have produced further events and continue to engage in their unlawful practices and conduct, including but not limited to, failing to reimburse the Charleston registrants for expenses and costs associated with the cancelled event.

123. Additionally, the State seeks permanent injunctive relief prohibiting Defendants/Respondents from engaging in unfair or deceptive acts or practices in the production and/or maintenance of events.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of West Virginia *ex rel.* Attorney General Patrick Morrisey hereby prays for the following:

1. Enter an Order PERMANENTLY ENJOINING and RESTRAINING Defendants/Respondents HMM, Jeff Suffolk, and Alta Equity Partners, and their officers, directors, managers, agents, employees, servants, independent contractors, heirs, successors, assigns, and transferees from engaging in unfair or deceptive acts or practices in violation of W. Va. Code §§ 46A-6-101 and -104, specifically, and the West Virginia Consumer Credit Protection Act, generally;

2. Enter an Order finding Jeff Suffolk and Alta Equity Partners are alter egos of HMM, and personally liable for all violations of West Virginia law committed by HMM and/or its agents;

3. Enter judgment against Defendants/Respondents HMM, Jeff Suffolk, and Alta Equity Partners, jointly and severally, and Order them to pay reimbursement and/or restitution to West Virginia consumers for all monies paid and/or expenses incurred relating to the registration and subsequent cancellation of the 2014 Dirty Girl Mud Run in Charleston, West Virginia;

4. Enter judgment against Defendants/Respondents HMM, Jeff Suffolk, and Alta Equity Partners, jointly and severally, and Order them to

disgorge all monies unjustly enriched relating to the registration and subsequently cancellation of the 2014 Dirty Girl Mud Run in Charleston, West Virginia, including but not limited to, those monies Defendants/Respondents were unjustly enriched through the purchase of the 100 LLC assets/name brand at a lower value directly and proximately derived from Defendants/Respondents unlawful conduct in the cancellation of the 2014 Dirty Girl Mud Run in Charleston, West Virginia.

5. Enter judgment against Defendants/Respondents HMM, Jeff Suffolk, and Alta Equity Partners, jointly and severally, and Order them to pay to the State of West Virginia all its attorneys' fees, court costs, investigation costs, and all other costs associated with the investigation and maintenance and prosecution of this action;

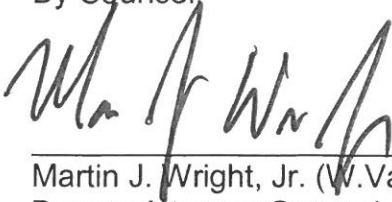
6. Enter judgment against Defendants/Respondents HMM, Jeff Suffolk, and Alta Equity Partners, jointly and severally, and Order them to pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) for each and every willful and repeated violation of chapter 46A of the West Virginia Code that they committed, as provided in W. Va. Code § 46A-7-111(2);

7. Grant such other and further relief as the Court deems just and appropriate.

Respectfully Submitted,

**STATE OF WEST VIRGINIA, *ex rel.*
PATRICK MORRISEY,
ATTORNEY GENERAL**

By Counsel:



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